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Denise Gerth

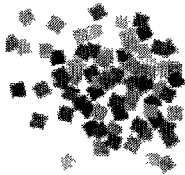
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To: Joann Allman/RTP/USEPA/US@EPA
cc:
Subject: Section 126 language clarification

for the docket on implementation


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----- Forwarded by Denise Gerth/RTP/USEPA/US on 04/09/03 09:41 AM -----



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04/03/03 11:59 AM

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Subject: Section 126 language clarification 

Attached is a redline strike version of the section 126 language to clarify that the 126 rule can be withdrawn when the NOx SIP is approved. Let me know if you have any comments.



126 withdrawlso.

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In the past several years, we have conducted two rulemakings to control interstate ozone transport in the eastern U.S. In 1998, EPA issued the NO_x SIP Call, which requires certain States in the eastern U.S. to meet statewide NO_x emissions budgets (63 FR 57356, October 27, 1998.) State programs to implement the rule have focused on reducing emissions from electric power generators and large industrial emitters. In addition, in response to petitions submitted by several northeastern States under section 126, EPA issued a separate rule (usually known as the Section 126 Rule) to establish Federal control requirements for certain electric power generators and industrial boilers and turbines in upwind States (64 FR 28250, May 25, 1999 and 65 FR 2674, January 18, 2000). ~~For both rules, the compliance date for achieving the required NO_x reductions is May 31, 2004.~~

These two NO_x transport rules overlap considerably, with the NO_x SIP Call being the broader action affecting more States. All the States affected by the Section 126 Rule are covered by the NO_x SIP Call. Therefore, we coordinated the two rulemakings and established a mechanism under which the Section 126 Rule would be withdrawn for sources in a State where EPA has approved a SIP meeting the NO_x SIP Call.¹ As a result of court actions, certain circumstances upon which the Section 126 Rule withdrawal provision was based have changed. The compliance dates for the Section 126 Rule and the NO_x SIP Call have been delayed and the NO_x SIP Call has been divided into two phases. We are currently conducting a rulemaking to update the withdrawal provision so that it will operate appropriately under these new circumstances.

On March 27, 2003, the Administrator signed a proposal to revise the provision in the Section 126 Rule that allows the rule to be withdrawn in States that control transport under the NO_x SIP Call. The current Section 126 Rule withdrawal provision only addresses the circumstances that existed at the time EPA issued the final rule approving the section 126 petitions. Therefore, currently, the Section 126 Rule can only be withdrawn if a SIP meets the full NO_x SIP Call (March 2, 2000 budgets) and has the

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original May 1, 2003 compliance date. As the result of litigation, the compliance dates for the Section 126 Rule and the NO_x SIP Call have been delayed until May 31, 2004 and the NO_x SIP Call has been divided into 2 phases. Therefore, we are updating the withdrawal provision so that it will continue to function as intended. The proposal allows EPA to withdraw the Section 126 Rule if a State adopts, and EPA approves, a SIP with a May 31, 2004 compliance date that meets either the full NO_x SIP Call or Phase 1 where the State is regulating the Section 126 sources to the same stringency as the Section 126 Rule requires. In this action, we are also proposing which SIPs meet these new criteria. Because we previously stayed the 8-hour portion of the Section 126 Rule, this proposal only affects whether the Section 126 Rule would be withdrawn under the 1-hour ozone standard.

Significantly, in both the NO_x SIP Call and the Section 126 Rule, EPA made determinations of whether upwind sources are significantly contributing to downwind nonattainment problems under both the 1-hour and 8-hour ozone standards. In the final SIP call rule, EPA determined that the same level of reductions was needed to address transport for both the 1-hour and 8-hour standards.² Thus, unlike in the past, States affected by transport can develop their new ozone implementation plans with the knowledge that the issue of interstate transport has already been addressed "up front." This approach will provide these States with certainty that they will benefit from substantial emission reductions from upwind sources and give them significantly improved boundary conditions that they can rely on as they work to identify additional emission reductions they will need to include in a local area's attainment SIP.

²The Agency stayed the 8-hour basis for both rules in response to the extensive and extended litigation that occurred concerning the establishment of the 8-hour ozone standard.[Cite] Recently, however, the Administrator signed a final rule on the UV-B issue and reaffirmed the 8-hour ozone standard (68 FR 614 (January 6, 2003)), which was remanded to EPA in ATA I, 175 F.3d 1027. Having now reaffirmed the 8-hour standard, the Agency plans to take action in the near future to reinstate the 8-hour bases for both the NO_x SIP Call and the Section 126 Rule. Such action would provide the initial basis for dealing with ozone transport as part of the implementation of the 8-hour standard.